

Assembly Bill No. 1730

CHAPTER 457

An act to amend Section 2944.7 of, and to add Sections 2944.8 and 2944.10 to, the Civil Code, relating to mortgages.

[Approved by Governor September 19, 2014. Filed with
Secretary of State September 19, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1730, Wagner. Mortgage loan modification.

Existing law, applicable to residential mortgages, prohibits a person who negotiates, arranges, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation from, among other things, demanding or receiving any compensation until every service that the person contracted to perform or represented that he or she would perform is accomplished. Existing law makes a violation of these provisions by a natural person a misdemeanor punishable by a specified fine or imprisonment, or both.

This bill would require the assessment of civil penalties for a violation of these provisions and would authorize designated state and local government officials to commence civil actions to recover those penalties.

This bill would, in addition to the civil penalties described above, authorize further civil penalties for unlawful mortgage modifications perpetrated against a senior citizen or disabled person, as defined, and provide criteria for the assessment of these additional penalties. The bill would authorize a court to order the offender to pay restitution to the senior citizen or disabled person, as specified.

This bill would impose a 4-year statute of limitations for actions brought pursuant to these provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 2944.7 of the Civil Code is amended to read:

2944.7. (a) Notwithstanding any other law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

(2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.

(3) Take any power of attorney from the borrower for any purpose.

(b) A violation of this section by a natural person is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a business entity, the violation is punishable by a fine not exceeding fifty thousand dollars (\$50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(c) In addition to the penalties and remedies provided by Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, a person who violates this section shall be liable for a civil penalty not to exceed twenty thousand dollars (\$20,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving a violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

(d) Nothing in this section precludes a person, or an agent acting on that person's behalf, who offers loan modification or other loan forbearance services for a loan owned or serviced by that person, from doing any of the following:

(1) Collecting principal, interest, or other charges under the terms of a loan, before the loan is modified, including charges to establish a new payment schedule for a nondelinquent loan, after the borrower reduces the unpaid principal balance of that loan for the express purpose of lowering the monthly payment due under the terms of the loan.

(2) Collecting principal, interest, or other charges under the terms of a loan, after the loan is modified.

(3) Accepting payment from a federal agency in connection with the federal Making Home Affordable Plan or other federal plan intended to help borrowers refinance or modify their loans or otherwise avoid foreclosures.

(e) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

SEC. 2. Section 2944.8 is added to the Civil Code, to read:

2944.8. (a) In addition to any liability for a civil penalty pursuant to Section 2944.7, if a person violates Section 2944.7 with respect to a victim who is a senior citizen or a disabled person, the violator may be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which may be assessed and recovered in a civil action.

(b) As used in this section, the following terms have the following meanings:

(1) “Disabled person” means a person who has a physical or mental disability, as defined in Sections 12926 and 12926.1 of the Government Code.

(2) “Senior citizen” means a person who is 65 years of age or older.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant’s conduct caused one or more senior citizens or disabled persons to suffer any of the following: loss or encumbrance of a primary residence, principal employment, or source of income, substantial loss of property set aside for retirement, or for personal or family care and maintenance, or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant’s conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant’s conduct.

(d) A court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as necessary to restore to a senior citizen or disabled person money or property, real or personal, that may have been acquired by means of a violation of Section 2944.7.

SEC. 3. Section 2944.10 is added to the Civil Code, to read:

2944.10. Any action to enforce any cause of action pursuant to Section 2944.7 or 2944.8 shall be commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this section shall be revived by its enactment.